

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

|                                  |   |                            |
|----------------------------------|---|----------------------------|
| <b>GREGORY MARTIN,</b>           | ) |                            |
| <b>Movant,</b>                   | ) |                            |
|                                  | ) |                            |
| <b>v.</b>                        | ) | <b>2:18-cr-00124-JDL-1</b> |
|                                  | ) | <b>2:20-cv-405-JDL</b>     |
| <b>UNITED STATES OF AMERICA,</b> | ) |                            |
|                                  | ) |                            |
| <b>Respondent.</b>               | ) |                            |

**ORDER ON MOTION TO APPOINT COUNSEL**

Gregory Martin has filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C.A. § 2255 (West 2021) (ECF No. 100). Attached to that motion was a request to appoint Attorney David J. Bobrow as counsel (ECF Nos. 100-1 at 1; 102). Magistrate Judge John C. Nivison denied the motion to appoint counsel, noting that “at this stage of the proceedings, the Court cannot conclude that [Martin] has demonstrated that an appointment of counsel is warranted” under the factors articulated by the First Circuit in *United States v. Mala*, 7 F.3d 1058, 1063-64 (1st Cir. 1993). ECF No. 103 at 2. Martin has now filed a second motion to appoint counsel (ECF No. 105), along with a motion for reconsideration of the Magistrate Judge’s decision (ECF No. 104). Attorney Bobrow has also filed a supplemental motion for reconsideration (ECF No. 107).

In *Mala*, the First Circuit determined that appointment of counsel was warranted where (1) the appellant had “shown a fair likelihood of success on the constitutional claim;” (2) the claim was “factually complex and legally intricate;” and (3) the facts were “largely undeveloped” and the appellant was “severely hampered

in his ability to investigate them.” 7 F.3d at 1063-64. In this case, I find that the progression of the proceedings thus far—particularly the Government’s submission of a lengthy and relatively complex response and request for dismissal, in which the Government admits to the existence of a video of one of Martin’s arresting officers indicating an interest in pulling over “thugs” (ECF No. 113)—reveal that Martin has a “fair likelihood of success” on a claim that is “factually and legally intricate.”<sup>1</sup> *Mala*, 7 F.3d at 1063-64. I further conclude that Martin is “severely hampered” in his ability to investigate both the facts and the law, particularly given his undisputed assertion that the COVID-19 pandemic has limited his access to the prison law library. *Id.* at 1064.

Accordingly, Martin’s second motion to appoint counsel (ECF No. 105) is **GRANTED**, on the condition that he first file an approved financial declaration with the Court. The motions for reconsideration (ECF Nos. 104, 107) are **DENIED AS MOOT**.

**SO ORDERED.**

Dated: February 25, 2021

/s/ JON D. LEVY  
**CHIEF U.S. DISTRICT JUDGE**

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<sup>1</sup> I note, as the Court did in *Mala*, that my “belief that there is some likelihood of success is not a finding, but merely an acknowledgment that [Martin] has limned a colorable claim.” *Mala*, 7 F.3d at 1063 n.6.